responsibility and the leaving of accomplishment of a non-racial educational system to the unaided efforts of individuals who, even if not deliberately obstructed, lack the knowledge and mastery of the school system possessed by the Board. The authorities, not these individuals, have the duty and power to provide adequate leadership in reaching, with a minimum of personal frictions, alarms and frustrations, the constitutionally protected goal of equal educational opportunity for all children. See Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts*, 78 Harv. L. Rev. 564 (1964).

II

There are certain features of the court's decision with which we are unable to agree. These concern the desegregation of faculties and staffs, the dissolution of the 1963 injunction, and the adequacy of the counsel fee awarded.

The composition of the faculty as well as the composition of its student body determines the character of a school. Indeed, as long as there is a strict separation of the races in faculties, schools will remain "white" and "Negro," making student desegregation more difficult. The standing of the plaintiffs to raise the issue of faculty desegregation is conceded. The question of faculty desegregation was squarely raised in the District Court and should be heard. It should not remain in limbo indefinitely. After a hearing there is a limited discretion as to when and how to enforce the plaintiffs' rights in respect to this, as there is in respect to other issues, since administrative considerations

are involved; but the matter should be inquired into promptly. There is no legal reason why desegregation of faculties and student bodies may not proceed simultaneously.

The "freedom of choice" plan being only an interim measure, the adequacy of which is yet unknown, this court should reinstate the June 3, 1963, injunction dissolved by the District Court when it approved the plan. In *Brooks* v. *Arlington County,* 324 F. 2d 303 (4th Cir. 1963), where an injunction had been dismissed by the District Court immediately after a school board adopted a resolution formally rescinding its policy of segregation, this court ordered reinstatement of the injunction. We there held the dismissal premature because there had been no showing by the school board of continuing compliance.

We also dissent from the allowance of only $75.00 as counsel fees to the plaintiffs, which we deem egregiously inadequate. It will not stimulate school boards to desegregate if they see that they can gain time by resisting to the eleventh hour without effective discouragement of these tactics by the courts.

The principle applied by this court in *Bell* v. *School Board of Powhatan County, Virginia,* 321 F. 2d 494 (4th Cir. 1963), needs to be extended, not narrowed. See Note, 77 Harv. L. Rev. 1135 (1964). It ought not to be reserved for the most extreme cases of official recalcitrance, but should operate whenever children are compelled by deliberate official action or inaction to resort to lawyers and courts to vindicate their clearly established and indisputable right to a desegregated education. Counsel fees are required in

simple justice to the plaintiffs. The award of fees in this equity suit is in the court's judicial discretion and should be commensurate with the professional effort necessarily expended. One criterion which may fairly be considered is the amounts found reasonable in compensating the Board's attorneys for their services. While public monies, aggregating thousands of dollars, are paid defense lawyers, the attorneys for the plaintiffs who have prosecuted these cases for two full rounds in the District Court and on appeal are put off with a miniscule fee of $75.00.

Judgment

[Filed and Entered, April 7, 1965]

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 9471

CAROLYN BRADLEY and MICHAEL BRADLEY, infants, by MINERVA BRADLEY, their mother and next friend, *et al.*,

Appellants,

—VS.—

THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, H. I. WILLET, Division Superintendent of Schools of the City of Richmond, Virginia, and E. J. OGLESBY, ALFRED L. WINGO and E. T. JUSTIS, individually and constituting the Pupil Placement Board of the Commonwealth of Virginia,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia.

This cause came on to be heard on the record for the United States District Court for the Eastern District of Virginia, and was argued by counsel.

Judgment

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby affirmed with costs.

April 7, 1965.

CLEMENT F. HAYNSWORTH
Chief Judge, Fourth Circuit

Filed

April 7, 1965

MAURICE S. DEAN
Clerk

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